



Legislative Update

September 2013

Susan Combs | Texas Comptroller of Public Accounts

Focus on 2013 Legislation

GENERAL BILLS

Possession of Automated Sales Suppression Devices and Phantom-Ware is Illegal

Senate Bill 529, effective Sept. 1, 2013, makes it a state jail felony to knowingly sell, purchase, install, transfer or possess any automated sales suppression device or phantom-ware, including any device that contains a sales suppression device or a link to sales suppression software.

Automated sales suppression devices and phantom-ware (sometimes known as “zappers”) are devices or software used to commit tax fraud by falsifying sales data on electronic cash registers at the point of sale. *Business & Commerce Code Sections 326.001 and 326.002, Code of Criminal Procedure Article 59.01*

2013 Early Payment Requirement of Certain Taxes – Repealed

Senate Bill 559, effective June 14, 2013, repealed a requirement for early payment in August 2013 by certain sales, mixed beverage and fuels taxpayers. The early payment requirement was repealed prior to its implementation.

Boat and Boat Motor Sales and Use Tax

Definition of a Boat Amended

House Bill 1106, effective Sept. 1, 2013, amends the definition of a “boat” by changing how a vessel’s length is measured. The length of a vessel determines whether it is a boat, subject to Texas *boat* sales and use tax, or a vessel, subject to Texas *limited* sales and use tax.

Previously, a “boat” meant a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer. This bill provides that a boat is a vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern. *Parks and Wildlife Code, Chapter 31*

CIGARETTE TAX; CIGARS AND TOBACCO PRODUCTS TAX

Cigarette Tax Increase

House Bill 3536, effective Sept. 1, 2013, imposes a new fee on cigarettes and cigarette tobacco products manufactured by companies who did not originally participate in the Master Settlement Agreement, including non-settling manufacturers and subsequent participating manufacturers.

IN THIS UPDATE

This month’s issue features the changes to Texas tax laws resulting from house and senate bills passed during the 83rd Legislature Regular Session. Visit the Texas Legislature’s website at www.capitol.state.tx.us to read bills of interest to you.

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Cigarette and tobacco distributors are required to collect a fee of 2.75 cents per cigarette stick or 0.09 ounces of cigarette tobacco product manufactured by a non-settling manufacturer or subsequent participating manufacturer. Distributors will report and remit the fees to the Comptroller. By remitting this fee, distributors are allowed an additional 0.5 percent cigarette stamping allowance for a total of 3 percent of all cigarette stamps purchased.

Each year, the Comptroller will set a new fee rate by increasing the previous year's rate by the greater of 3 percent or the rate of inflation calculated by the Consumer Price Index for All Urban Consumers (CPI-U). The Comptroller is required to provide information on the agency's website to assist distributors in calculating the monthly fee. The Comptroller is responsible for administering and enforcing the fee in the same manner as Chapters 154 or 155 of the Tax Code. *Health and Safety Code Chapter 161 Subchapter V*

FRANCHISE TAX

Definition of Retail Trade Expanded

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, expands the definition of retail trade to include:

- activities classified in Standard Industry Classification (SIC) Industry Group 753 (Automotive Repair Shops); and
- activities classified in SIC Code 7359 involving the:
 - rental or leasing of tools;
 - rental or leasing of party and event supplies;
 - rental or leasing of furniture;
- heavy construction equipment rental or leasing activities under SIC Code 7353; and
- rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code.

Entities primarily engaged in these activities, as defined in Tax Code Section 171.002, qualify for the reduced retail/wholesale tax rate. *Tax Code Section 171.0001*

Temporary Rates for 2014

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, and before Jan. 1, 2015, allows for temporary reduced rates for 2014 reports.

A taxable entity will pay a reduced rate of 0.975 percent of taxable margin or, for a taxable entity primarily engaged in retail or wholesale trade, a rate of 0.4875 percent of taxable margin. *Tax Code Section 171.0022*

Temporary Rates for 2015

House Bill 500, effective for reports originally due on or after Jan. 1, 2015, and before Jan. 1, 2016, allows for temporary reduced rates for 2015 reports only if the Comptroller certifies, on or after Sept. 1, 2014, that probable revenue for the state fiscal biennium ending Aug. 31, 2015, is estimated to exceed probable revenue as stated in the Comptroller's Biennial Revenue Estimate for the 2014-2015 fiscal biennium by an amount sufficient to offset the loss in probable revenue that will result if taxable entities compute the tax at the rates provided.

If the probable revenue is so certified, the reduced rate for 2015 reports is 0.95 percent. For a taxable entity primarily engaged in retail or wholesale trade, the rate is 0.475 percent. *Tax Code Section 171.0023*

New Franchise Tax Exemption for Nonadmitted Insurance Organizations

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, exempts from franchise tax a nonadmitted insurance organization that is subject to an occupation tax or any other tax imposed for the privilege of doing business in another state or foreign jurisdiction. *Tax Code Section 171.052*

New Franchise Tax Exemption for Political Subdivision Corporations

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, exempts a political subdivision corporation, as defined under Section 304.001, Local Government Code, from franchise tax. *Tax Code Section 171.086*

Minimum \$1 Million Deduction

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, allows a taxable entity to make an election to compute margin by subtracting \$1 million from total revenue. *Tax Code Section 171.101*

Additional Exclusions from Total Revenue

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, adds the following exclusions from total revenue:

Pharmacy Network – A taxable entity that provides a pharmacy network may exclude from total revenue reimbursements for payments to pharmacies in the pharmacy network. *Tax Code Section 171.1011(g-4)*

Aggregate Transporters – Taxable entities primarily engaged in the business of transporting aggregates may exclude from total revenue subcontracting payments made by the taxable entity to independent contractors for the performance of delivery service on behalf of the taxable entity. The bill also defines “aggregates.” *Tax Code Section 171.1011(g-8)*

Barite Transporters – Taxable entities primarily engaged in the business of transporting barite may exclude from total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on behalf of the taxable entity. The bill also defines “barite.” *Tax Code Section 171.1011(g-10)*

Landman Services – Taxable entities primarily engaged in the business of performing landman services may exclude from total revenue subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on behalf of the taxable entity. The bill also defines “landman services.” *Tax Code Section 171.1011(g-11)*

Cost of Vaccine – Taxable entities may exclude from total revenue the actual cost paid by the taxable entity for a vaccine. The bill also defines the term “vaccine.” *Tax Code Sections 171.1011(u) and (p)(8)*

Waterway Transportation – Taxable entities primarily engaged in transporting goods by waterways and that do not subtract the cost of goods sold in computing taxable margin may exclude from total revenue the direct costs of providing transportation services by intrastate or interstate waterways. *Tax Code Section 171.1011(v)*



Registered Motor Carrier – A taxable entity that is registered as a motor carrier under Chapter 643, Transportation Code, may exclude from total revenue flow-through revenue derived from taxes and fees. *Tax Code Section 171.1011(x)*

Cost of Goods Sold Deduction for Certain Pipeline Entities

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, allows a pipeline entity providing services for others related to product the pipeline does not own to subtract as a cost of goods sold its depreciation, operations and maintenance costs.

This change applies only to a pipeline entity that owns or leases and operates a pipeline by which the product is transported for others and only to that portion of the product to which the entity does not own title and is primarily engaged in gathering, storing, transporting or processing crude oil, including finished petroleum products, natural gas, condensate and natural gas liquids, except for a refinery installation that manufactures finished petroleum products from crude oil. The term “processing” is specifically defined. *Tax Code Sections 171.1012(k-2) and (k-3)*



Cost of Goods Sold Deduction for Movie Theaters

House Bill 500, effective for reports originally due on or after Sept. 1, 2013, allows a taxable entity that is a movie theater to deduct as cost of goods sold the costs described in Tax Code Section 171.1012 related to the acquisition, production, exhibition or use of a film or motion picture, including expenses for the right to use the film or motion picture. *Tax Code Section 171.1012(t)*

Combined Group Reporting

House Bill 500, effective for reports originally due on or after Jan. 1, 2014:

Election to Deduct \$1 Million in Determining Margin – allows a combined group to elect to deduct \$1 million in determining margin. *Tax Code Section 171.1014(d)*

Retail or Wholesale Electric Utilities Provider – restricts a taxable entity that provides retail or wholesale electric utilities from being a member of a combined group, if less than 5 percent of the combined group's total revenue is derived from those utilities. *Tax Code Section 171.1014(J)*

Apportionment of Internet Hosting Receipts

House Bill 500, effective for reports originally due on or after Jan. 1, 2014, sources Internet hosting receipts to Texas only when the customer to whom the service is provided is located in Texas. *Tax Code Section 171.106*

Deduction from Margin for Relocation Costs

House Bill 500, effective for reports originally due on or after Sept. 1, 2013, defines relocation costs and provides a deduction from a taxable entity's apportioned margin to Texas for relocation costs.

To qualify for this deduction, an entity cannot have had nexus in Texas, or have been a member of a combined group that had nexus in Texas, prior to relocation. *Tax Code Section 171.109*

Tax Credit for Rehabilitation of Certified Historic Structures

House Bill 500, effective for reports due on or after Jan. 1, 2015, allows a tax credit of up to 25 percent of eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure placed in service on or after Sept. 1, 2013.

All or part of the credit may be sold or assigned without limit, and the credit can be carried forward for up to five consecutive reports. *Tax Code Chapter 171, Subchapter S*

Chapter 171 Repeals

House Bill 500, effective for reports originally due on or after Jan. 1, 2014:

Informational Reporting for No-Nexus Members of a Combined Group – repeals the requirement for combined group members with no nexus to report Texas receipts and receipts subject to throwback. *Tax Code Section 171.103*

No Tax Due Threshold of \$600,000 and Revenue Discounts – repeals the reduction of the revenue threshold to \$600,000, making the \$1 million threshold permanent and eliminating the need for discounts related to total revenue under \$1 million. *Tax Code Sections 171.002 and 171.0021*

Franchise Tax Credit for Certain Research and Development Activities

House Bill 800, effective for reports originally due on or after Jan. 1, 2014, provides an option to receive a franchise tax credit for certain research and development activities. A taxable entity is not eligible for the franchise tax credit if the taxable entity, or any member of its combined group, received a sales tax exemption under Tax Code Section 151.3182 during the period on which the franchise tax is based.

“Qualified research” and “qualified research expense” are defined by Section 41 of the Internal Revenue Code, but are limited to research conducted in Texas. The eligibility for the credit and the calculation of the amount of credit, as well as the carryforward rules, are provided in Tax Code Chapter 171, Subchapter M.

An increased amount of credit is allowed for taxable entities that contract with public or private institutions of higher education for the performance of qualified research and have qualified research expenses incurred in Texas under the contract during the period on which the report is based. *Tax Code Chapter 171, Subchapter M*

Tax Credit for Clean Energy Project

House Bill 2446, effective June 14, 2013, transfers Subchapter H of the Government Code, Chapter 490 to Chapter 171 of the Tax Code as Subchapter L.

Amendments to this subchapter change the credit limitation for each report to the amount of franchise tax due after any applicable credits and establish a credit carryforward for no more than 20 consecutive reports.

The subchapter is amended to allow the clean energy credit to be assigned to one or more taxable entities and also pushes back the date the Comptroller can issue a credit to the later of Sept. 1, 2018, or the expiration of an agreement under Chapter 313, Texas Economic Development Act, regarding the clean energy project for which the credit is issued.

The definition of “clean energy project” is amended to include the construction of a natural gas-fueled electric generating facility and allows only one of the three clean energy projects certified to be a natural gas project. *Tax Code Chapter 171 Subchapter L*

Revenue Exclusions for Agricultural Aircraft Operations

House Bill 2451, effective for reports originally due on or after Jan. 1, 2014, allows a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation to exclude from total revenue the cost of labor, equipment, fuel and materials used in providing those services. *Tax Code Section 171.1011(w-1)*





Additional Exclusions for Certain Flow-Through Funds

House Bill 2766, effective Jan. 1, 2014, allows an exclusion from total revenue for certain flow-through funds mandated by subcontract, as well as contract, to be distributed to other entities. Eligible flow-through funds are restricted to sales commissions, the tax basis of securities underwritten and certain subcontracting payments. Eligible subcontracting payments must be made under either a contract or subcontract entered into by the taxable entity to provide services, labor or material for real property construction that includes remediation. *Tax Code Section 171.1011(g) and (g)(3)*

HOTEL OCCUPANCY TAX

Fort Worth Can Receive Tax Revenue from Hotels to Fund Qualified Projects

Senate Bill 748, effective Sept. 1, 2013, allows Fort Worth to create project financing zones to fund a convention center facility, multipurpose arena or venue and related infrastructure. The city may receive from hotels located in a project financing zone the incremental increase in revenue from state and local sales, hotel and mixed beverage taxes for a period of up to 30 years. This includes revenue from hotels that are built after the zone is designated, but not from an existing convention center hotel. *Tax Code Sections 351.1015 and 351.1065*

INSURANCE TAX

Volunteer Fire Department Assistance Fund Assessment

House Bill 7, effective June 14, 2013, provides that the Comptroller will assess and collect, for each state fiscal year, the lesser of the total amount that the General Appropriations Act appropriates from the Volunteer Fire Department Assistance Fund account in the general revenue fund, or \$30 million. The assessment is collected from property and casualty insurers authorized to do business in Texas. The Commissioner of Insurance will determine the amount assessed each year. This change is effective beginning with the 2013 assessment, which is billed in May 2014, and due Aug. 1, 2014. *Insurance Code Section 2007.002*

Bail Bond Premium

House Bill 1047, effective Sept. 1, 2013, exempts from premium tax, premium or service fees retained by a bail bond surety that is licensed under Occupations Code Chapter 1704 or by a property and casualty agent in connection with the execution or delivery of a bail bond. *Insurance Code Section 221.002*

Surplus Lines – Managing Underwriter Definition Changed

House Bill 1405, effective Jan. 1, 2014, requires a managing underwriter to collect, report and pay the premium tax unless the agent has, at or prior to binding the coverage, a written agreement that requires the surplus lines agent that places the policy with the managing underwriter to collect, report and pay the tax. *Insurance Code Section 225.006*

The bill also requires that the agent with the premium tax responsibility is responsible for filing with the Surplus Lines Stamping Office of Texas and for complying with all other statutory requirements imposed on surplus lines agents under Chapter 981. *Insurance Code Section 981.105*

Surplus Lines – Stored or In-Transit Baled Cotton

House Bill 2972, effective Jan. 1, 2014, exempts premiums on policies that insure risks or exposures under ocean marine insurance coverage of stored or in-transit baled cotton for export. *Insurance Code Section 225.004*

Licensing of Captive Insurers

Senate Bill 734, effective June 14, 2013, allows captive insurers to obtain a certificate of authority from the Texas Department of Insurance (TDI). The licensed captive premium tax rate is 0.5 percent. These licensed captives are subject to a minimum premium tax of \$7,500 and a maximum premium tax of \$200,000.

The premium tax is imposed on all premium receipts for insurance written by the captive, regardless of the location of the risk. A premium tax credit may be claimed for examination expenses paid to TDI during the calendar year for which the tax is due.

A licensed captive insurer is also subject to maintenance tax based on the location of the risks in Texas, as applicable to the individual lines of business written. Captives are exempt from payment of the Office of Public Insurance Counsel (OPIC) assessment.

The annual tax report due date is March 1, and the tax due is based on premium receipts from the previous calendar year. Captive insurers licensed under this bill are required to make tax prepayments each March 1 and Aug. 1 and are subject to Subtitles A and B, Title 2, Tax Code.

Nonadmitted captives may continue to write coverage for their parent and affiliated companies, and are subject to premium tax at the rate of 4.85 percent. *Insurance Code Sections 101.053 and 226.003*

MIXED BEVERAGE GROSS RECEIPTS TAX

Mixed Beverage Gross Receipts Tax Rate Lowered; New Mixed Beverage Sales Tax Imposed

House Bill 3572, effective Jan. 1, 2014, lowers the mixed beverage gross receipts tax rate from 14 percent to 6.7 percent. The bill also imposes an 8.25 percent mixed beverage sales tax.

Mixed beverage gross receipts tax is imposed on the mixed beverage permittee and will be administered the same as before but at a lower rate. In addition, a mixed beverage permittee will collect an 8.25 percent tax on each mixed beverage sold, prepared or served. The new sales tax is also due on ice and each nonalcoholic beverage sold, prepared or served to be mixed with an alcoholic beverage and consumed on the permitted premises.

Mixed beverage sales tax will be administered, collected and enforced the same as sales and use tax is administered, collected and enforced under Tax Code Chapter 151, except there are no prepayments, timely filing discounts or local mixed beverage sales taxes. Mixed beverage tax allocation for cities and counties will be based on the combined revenue of the mixed beverage taxes.

Due to the change in the structure of mixed beverage taxes, a permittee's bond security requirements may be adjusted. Our office will notify the permittee if a change is needed. *Tax Code Sections 151 and 183*



New Brewer's Self-Distribution Permit and Manufacturer's Self-Distribution License

Senate Bill 516 and Senate Bill 517, effective Sept. 1, 2013, create a Brewer's Self-Distribution Permit (Senate Bill 516) and a Manufacturer's Self-Distribution License (Senate Bill 517). The bills allow the new permitted and licensed brewers and manufacturers to sell craft ale and beer to retailers. Brewers and manufacturers will also file monthly reports of their sales of alcohol to retailers in Texas to the Comptroller and to the Texas Alcoholic Beverage Commission. Alcohol sales reports to the Comptroller are filed electronically. *Alcoholic Beverage Code Chapters 12A and 62A; Tax Code Sections 151.456 and 151.466*

New Mixed Beverage Tax Permittee

Senate Bill 905, effective Sept. 1, 2013, authorizes the holder of a distiller's and rectifier's permit to sell distilled spirits to customers for on-premises and off-premises consumption. The bill adds a distiller's and rectifier's permit to the definition of a mixed beverage permittee.

Sales of distilled spirits for off-premises consumption will be subject to sales tax.

Sales of distilled spirits at the distillery will be subject to mixed beverage tax, including sampling fees collected at sampling events held at the distillery.

Annual sales of distilled spirits are restricted to no more than 3,000 gallons for consumption on the premises and 3,500 gallons for consumption off the premises. *Alcoholic Beverage Code Chapters 14 and 105 and Tax Code Chapter 183*



MOTOR FUELS TAXES

Compressed Natural Gas and Liquefied Natural Gas Tax Collection Change

House Bill 2148, Effective Sept. 1, 2013, requires the tax on compressed natural gas (CNG) and liquefied natural gas (LNG) to be collected at the time of delivery into the fuel supply tank of a motor vehicle. A licensed dealer collects and remits the \$0.15 per gallon tax.

On July 12, 2013, the Comptroller mailed details on the new CNG/LNG license requirements, along with a questionnaire, to all current liquefied gas dealers. Dealers who returned their questionnaire by Aug. 20, 2013, were issued a new appropriate license. Dealers who did not return the questionnaire were issued a liquefied gas decal license and will be contacted at a later date.

Dealers who sell only liquefied gas will keep their liquefied gas dealer license. Dealers who sell only CNG or LNG will receive a CNG/LNG dealer license, and dealers who sell both liquefied gas and CNG or LNG will receive a combination liquefied gas/CNG/LNG dealer license.

An individual user who maintains a CNG or LNG storage facility and makes deliveries of CNG or LNG into their own motor vehicles from this storage are required to obtain a CNG/LNG dealer license.

All prepaid liquefied gas decals currently issued to motor vehicles that operate using CNG or LNG are cancelled, effective Aug. 31, 2013. These decal holders will automatically receive a refund for the unused portion of the decal.

Metropolitan rapid transit authorities and regional transportation authorities that maintain a private CNG or LNG refueling facility not accessible to the public have the option to prepay the CNG and LNG tax for each transit vehicle annually by way of a decal. These transit authorities may elect to obtain a CNG/LNG dealer

license and remit tax on each gallon of CNG or LNG delivered into their transit vehicles. Transit authorities that do not maintain a private CNG or LNG storage facility are required to pay the tax on each gallon delivered into the transit vehicles.

CNG/LNG dealers with an average quarterly tax liability of more than \$600 must file quarterly reports. Otherwise, CNG/LNG dealers file annual returns.

Licensed CNG/LNG dealers are eligible to claim a refund on bad debts.

This bill provides a tax exemption for CNG and LNG delivered into the fuel supply tanks of motor vehicles operated exclusively by:

- the United States government;
- Texas public school districts;
- commercial transportation companies and metropolitan rapid transit authorities operating under Transportation Code Chapter 451 that provide public school transportation services to Texas public school districts;
- Texas volunteer fire departments;
- Texas counties;
- nonprofit electric cooperatives; and
- nonprofit telephone cooperatives.

The tax does not apply to CNG and LNG used in:

- motor vehicles used exclusively off-highway;
- off-highway equipment;
- stationary engines;
- motorboats;
- aircraft;
- equipment used solely for servicing aircraft and used exclusively off-highway;
- locomotive engines; or
- any device (other than a motor vehicle) operated or intended to be operated on public highways.

Qualified transit companies that paid tax on the purchase of CNG or LNG may request a refund of \$0.01 per gasoline gallon equivalent of compressed natural gas or diesel gallon equivalent of liquefied natural gas used in transit vehicles. *Tax Code Section 162*

Optional Biodiesel and Renewable Diesel Tax Exemption

House Bill 3086, effective Sept. 1, 2013, provides an option to collect and remit the \$0.20 per gallon diesel fuel tax on biodiesel, renewable diesel and on the volume of water, fuel ethanol, biodiesel and renewable diesel blended with petroleum diesel.

This option is available only to the licensed supplier, permissive supplier, distributor, blender or importer who first sells, blends or imports biodiesel, renewable diesel or a mixture of water, fuel ethanol, biodiesel and renewable diesel blended with petroleum diesel in Texas.

The first seller, blender or importer who elects to use this option is not subject to the invoice, storage tank and pump labeling requirements outlined in Comptroller Rule 3.443. A diesel fuel tax exemption may not be claimed on a subsequent sale, and a license holder or other purchaser is not entitled to a refund or credit. *Tax Code Section 162*



Revocation of End User Number to Purchase Dyed Diesel Fuel

Senate Bill 603, effective Sept. 1, 2013, requires the Comptroller to revoke the end user number issued to a purchaser of dyed diesel fuel after receiving notice of a final judgment against the purchaser for failure to pay an amount owed to a licensed supplier or distributor for the purchase of dyed diesel fuel.

The Comptroller may reinstate an end user number with proof that the purchaser whose end user number was revoked has satisfied the final judgment. *Tax Code Section 162*

MOTOR VEHICLE SALES AND USE TAX

Trusts and Motor Vehicle Gift Tax

House Bill 2913, effective Sept. 1, 2013, allows certain revocable trusts to qualify for the \$10.00 gift tax when such trust is the donor or recipient of the motor vehicle. *Tax Code Section 152.025*

Agriculture Registration and Farm Plates

House Bill 3256, effective Sept. 1, 2013, requires a Texas Agricultural and Timber Exemption Registration Number (Ag/Timber Number) to be presented at the time of a vehicle's registration in order for the vehicle to qualify for farm plates. *Transportation Code Sections 502.146, 502.433 and 502.434*

Texas Emissions Reduction Plan Incentives

Senate Bill 1727, effective June 14, 2013, redirects most duties associated with the Texas Emissions Reduction Plan (TERP) and the administration of the Clean Vehicle Incentive Program from the Comptroller's office to the Texas Commission on Environmental Quality (TCEQ). *Health and Safety Code Chapter 386*

SALES AND USE TAX – GENERAL

Exemption for Gold, Silver, Numismatic Coins and Bullion – Minimum Purchase Threshold Removed

House Bill 78, effective Oct. 1, 2013, removes the minimum purchase threshold requirement for exemption on the sale of all gold, silver or numismatic coins; or of platinum, gold or silver bullion.

Prior to the effective date of the legislation, only sales to a purchaser in a single transaction in which the total sales price of all of the items sold equals \$1,000 or more qualified for exemption. *Tax Code Section 151.336*

Exemption for School Booster Club Food Sales

House Bill 697, effective Sept. 1, 2013, includes booster clubs and other school support organizations in the sales tax exemption for food products, meals, soft drinks and candy, if served by their group during a regular school day pursuant to an agreement with the proper school authorities.

The bill also exempts from sales tax food products, meals, soft drinks and candy sold during a school-sponsored or sanctioned event at a concession stand operated by a booster club or other school support organization, if the proceeds benefit the school or school district. *Tax Code Section 151.314*



Research and Development Exemption

House Bill 800, effective Jan. 1, 2014, creates an option for a sales and use tax exemption for the purchase, lease or rental of depreciable tangible personal property purchased by a person for direct use in qualified research, as defined in Internal Revenue Code Section (IRC) 41.

The depreciable property must have a useful life exceeding one year and must be subject to depreciation either under generally accepted accounting principles (GAAP), or under IRC Section 167 or Section 168. Persons engaged in qualified research may claim a credit for franchise tax instead of the sales tax exemption.

Persons wishing to claim the sales tax exemption will be required to complete an application and file an annual information report with the Comptroller. *Tax Code Section 151.3182*

Refunds for Providers of Cable Television, Internet Access and Telecommunications Services

House Bill 1133, effective Sept. 1, 2013, allows providers of cable television service, Internet access service or telecommunications services (and their subsidiaries) to claim a refund for state sales and use taxes paid on the purchase, lease or rental of tangible personal property directly used or consumed in or during the distribution of cable television service; the provision of Internet access service; or the transmission, conveyance, routing or reception of telecommunications services. A refund may not be claimed for property used or consumed in providing data processing or information services.

The refund program does not apply to sales and use taxes imposed by local jurisdictions. Providers who claim the sales and use tax refund are excluded from claiming special property tax benefits for economic development on that same tangible personal property under Chapter 313 of the Tax Code.

The legislation caps the total amount available for refund to all claimants at \$50 million per calendar year. If the total of all qualifying refunds exceeds the cap, each eligible provider will receive a pro rata share of the \$50 million. *Tax Code Sections 151.316 and 313.021*

State Sales and Use Tax Exemption for Certain Data Centers

House Bill 1223, effective Sept. 1, 2013, exempts certain items necessary and essential to the operation of a qualified data center from state sales and use tax. An owner, operator and/or occupant of a data center being specifically constructed or refurbished in Texas to be used by a single occupant to house servers and related equipment for processing, storage and distribution of data may apply to the Comptroller for certification as a qualifying data center.

For certification, the applicant(s), must agree to make a capital investment of \$200 million or more over a five-year period from the date of certification and to create at least 20 permanent, full-time qualifying jobs in the county where the data center is located, and unrelated to moving jobs from another Texas county. To be a qualifying job, the job must pay at least 120 percent of the county average weekly wage in the county in which the job is based.

Owners, occupants and operators of certified data centers will be eligible to claim an exemption on qualified purchases made for 10-15 years following the date of certification, depending on the amount of capital investment made in the center by the owner, operator or occupant, whether individually or jointly. A data center's



certification can be revoked if the owner, operator or occupant (individually or jointly) fails to make the amount of capital investment or create the number of jobs required within the initial five-year time frame. In the event of a revocation, tax will be due on purchases made tax-free prior to revocation.

The exemption does not apply to local sales tax. Data centers with agreements to limit the appraised value of property for property tax under Tax Code Chapter 313 do not qualify for this exemption. *Tax Code Sections 151.359, 151.317 and 151.1551; Tax Code Chapters 313, 321 and 323*

Offshore Spill Containment System Exemptions

House Bill 1712, effective June 14, 2013, exempts tangible personal property that is used, or intended to be used, solely in an offshore spill response containment system, from sales and use tax. The bill also exempts services performed on qualifying property from sales and use tax.

The spill response containment system must be owned or leased by an entity formed primarily for the purpose of designing, developing, modifying, enhancing, assembling, operating, deploying and maintaining an offshore spill response containment system. *Tax Code Section 151.356*

Definition of an Auction

House Bill 3038, effective June 14, 2013, updates the definition of “auction” to include the sale of property by any method, format or venue, not only live bid calling. *Occupations Code Chapter 1802*

Destination Management Company Definition

House Bill 3169, effective Sept. 1, 2013, redefines “destination management services” to mean certain services regardless of whether such services are provided under a qualified destination management services contract, including transportation vehicle management; meeting, conference, transportation or event staffing; shuttle system services, including vehicle staging, radio communications, signage and routing services; and airport meet-and-greet services, including the provision of airport permits, manifest management services, portage and passenger greeting services.

The bill also redefines a qualified destination management company to mean, in part, a business or entity that:

- maintains a general liability insurance policy with a limit of at least \$1 million;
- has at least 80 percent of the entity’s clients located outside this state;
- does not prepare or serve beverages, meals or other food products, but may procure catering services on behalf of the entity’s clients;
- does not own or operate a venue at which events or activities for which destination management services are provided occur; and
- is not a member of an affiliated group, as that term is defined by Section 171.0001 (General Definitions), another member of which prepares or serves beverages, meals or other food products, or owns or operates a venue where destination management services are provided.

Tax Code Section 151.0565



Intravenous (IV) Systems Defined

House Bill 3169, effective Sept. 1, 2013, defines an intravenous (IV) system for sales and use tax purposes. A product is an IV system if the product is designed or intended to be used to administer fluids, electrolytes, blood and blood products, or drugs to patients or to withdraw blood or fluids from patients, regardless of whether the product is designed or intended to be inserted subcutaneously into any part of the body. *Tax Code Section 151.313*

Hospital Beds Defined

House Bill 3169, effective Sept. 1, 2013, defines a hospital bed as a bed that is specially designed for the comfort and well-being of patients and the convenience of healthcare workers, with special features that may include wheels, adjustable height, adjustable side rails and electronic buttons to operate both the bed and other nearby devices.

The new definition specifically includes the following items as a hospital bed:

- a mattress for the bed;
- any devices built into the bed or designed for use with the bed;
- infant warmers;
- incubators;
- other beds for neonatal and pediatric patients; and
- beds specifically designed and marketed for use in the rest, recuperation and treatment of obese patients, obstetric patients and burn patients.

The term does not include bed linens, stretchers, gurneys, delivery tables or detached accessories such as over-bed tables, trapeze devices or scales. *Tax Code Section 151.313*



Change to Average Sales Price of Newspapers for Sales Tax Exemption

House Bill 3169, effective Sept. 1, 2013, amends the definition of “newspaper,” so that to qualify for tax exemption, a newspaper must have an average sales price over a 30-day period of \$3.00 or less. Previously, the average sales price was \$1.50. *Tax Code Section 151.319*

Sales Tax Holiday Date Change for Clothing and School Supplies

Senate Bill 485, effective June 14, 2013, sets a new standard formula for determining the dates of the annual Sales Tax Holiday for clothing, footwear, backpacks and school supplies.

The date is now set by:

- determining the first day a Texas school district may begin classes;
- counting back 15 days from the first day of school; and
- identifying the Friday before the 15 days preceding the first day of school.

Tax Code Sections 151.326 and 151.327

Snack Food Items

Senate Bill 1151, effective Sept. 1, 2013, exempts snack foods from sales tax, unless they are sold through a vending machine or in individual-sized portions. Snack

foods sold through a vending machine or in individual-sized portions are taxable – it doesn't matter where they are sold or if eating facilities are provided by the seller.

Snack foods include:

- breakfast bars, granola bars, nutrition bars, protein bars, sports bars or yogurt bars, unless they are labeled and marketed as candy;
- snack mix and trail mix;
- nuts, unless candy-coated;
- popcorn; and
- chips, crackers or hard pretzels.

Candy, gum and soft drinks are not considered snack foods for sales tax purposes and are taxable regardless of the portion size.

An individual-sized portion is labeled as having not more than one serving; or, if the package does not specify servings, contains less than 2.5 ounces. *Tax Code Section 151.314*

“Staff Leasing Services” Become “Professional Employment Services”

Senate Bill 1286, effective Sept. 1, 2013, changes references from “staff leasing services” to “professional employment services.” *Tax Code Chapters 151 and 171*

Enterprise Zones – Definition of Qualified Employee

Senate Bill 1548, effective June 14, 2013, expands the definition of a “qualified employee” under the Texas Enterprise Zone Program to include employees who transport the enterprise project's goods or services. *Government Code Section 2303.003*

SALES AND USE TAX – LOCAL TAX

Authority of a Municipality to Create a Fire Control and Emergency Services District

House Bill 339, effective Sept. 1, 2013, allows a home-rule city of any size in Collin County the option to hold an election to create an emergency service or fire prevention district. *Fire Control, Prevention, and Emergency Medical Services Districts Act*

Tax Allocation Agreements between Municipalities and Emergency Service Districts in Combined Areas

House Bill 3159, effective Sept. 1, 2013, allows a municipality and an emergency services district to negotiate an agreement regarding the allocation of local sales and use taxes between the two jurisdictions when the city annexes the district's area, but the district continues to provide services. *Health and Safety Code Section 775.0754*

Generation Park Management District Created

House Bill 3860, effective June 14, 2013, authorizes the creation and operation of the Generation Park Management District in Houston. *Special District Local Laws Code Chapter 3916*



East Aldine Management District Expanded

House Bill 3935, effective June 14, 2013, adds territory to the East Aldine Management District. A portion of the area added to the district overlaps areas where Houston city sales and use tax is imposed due to strategic partnership agreements between utility districts and the city. These locations will be excluded from the district's sales tax area in order to maintain the 2 percent local sales tax cap.

Expiration of Street Maintenance Tax

Senate Bill 475, effective June 14, 2013, allows a general-law municipality with a population of 10,000 or more, that is completely surrounded by a city with a population of 1.3 million or more, to hold a reauthorization election for the municipal street maintenance and repair sales and use tax for a period of 10 years from its scheduled expiration date. Previously, the law only allowed a city that has the tax to reauthorize it for four years. *Tax Code Chapter 327*

Fort Bend County Improvement District Created

Senate Bill 605, effective June 14, 2013, authorizes the creation and operation of the Fort Bend County Improvement District. *Special District Local Laws Code Chapter 3898*

Emory/Rains County Sourcing Exclusion Extended

Senate Bill 997, effective June 14, 2013, extends until Sept. 1, 2024, the temporary exclusion from the 2009 amendments for the city of Emory and for Rains County that were originally set to expire on Sept. 1, 2014. The amendments specify that each sale of a taxable item is now consummated at the retailer's place of business in Texas where the retailer first accepts the order, provided that the order is placed in person by the purchaser or lessee of the taxable item. *Tax Code Sections 321.203 and 323.203*

Transportation Authority Combined Areas

Senate Bill 1461, effective June 14, 2013, redefines "special sales and use tax," for purposes of statutory provisions relating to adding a municipality to a regional transportation authority, as a sales and use tax levied by a municipality that is in excess of 1 percent, rather than a sales and use tax levied by a municipality under specified state law or an additional municipal sales and use tax levied by a municipality under the Municipal Sales and Use Tax Act.

It also provides that the tax rate of a special sales and use tax jurisdiction is automatically reduced, as needed, if the total tax rate in the area where the municipality and transportation authority overlap would exceed the 2 percent cap. *Transportation Code Chapter 452*

Place of Business Definition

Senate Bill 1533, effective Sept. 1, 2013, provides criteria under which a purchasing office may be considered a place of business of a retailer for the purpose of sourcing local sales taxes. *Tax Code Section 321.002*

Corporation of Presidio

Senate Bill 1584, effective June 14, 2013, validates and confirms the dissolution of the Development Corporation of Presidio and the creation of the Presidio Municipal Development District.



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